Before BREITENSTEIN, McWILLIAMS, and DOYLE, Circuit Judges.

BREITENSTEIN, Circuit Judge.

Defendants-appellants Goeltz, Bray, and Wray were charged in a one-count information with possession of official insignia in violation of 18 U.S.C.§701. Each was found guilty after trial to the court and appeals. We affirm.

Defendants demanded, and were refused, a jury trial. Section 701 authorizes a maximum penalty of six months imprisonment, a $250 fine, or both. The sentences for Goeltz and Bray were for six months imprisonment and a $250 fine. Wray received three years probation and a $250 fine. Section 1(3), 18 U.S.C., defines a petty offense as a misdemeanor the penalty for which does not exceed six months imprisonment or a $500 fine or both. The provisions of the Constitution, Art. III, § 2, cl. 3, and the Sixth Amendment, relating to jury trials in criminal cases do not apply to petty offenses. Frank v. United States, 395 U.S. 147, 148. See also Taylor v. Hayes, 94 S.Ct. 2697,2701 and cases there cited. Curtis v. Loether, 94 S.Ct. 1005, has no pertinence. The concern there was with the Seventh Amendment provision for jury trial in suits at common law where the value in controversy exceeds $20. Denial of jury trial in the instant case was proper.

Section 701 proscribes the possession of any "badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof,* * * except as authorized under regulations made pursuant to law * * *."

The charge relates to an Internal Revenue Service seizure notice. It bears the seal of IRS in the upper left-hand corner and reads:

"WARNING

UNITED STATES GOVERNMENT SEIZURE

This property has been seized for nonpayment of internal revenue taxes, by virtue of levy issued by the District Director of Internal Revenue. All persons are warned not to remove or tamper with this property, in any manner, under severe penalty of the law."

The design was prescribed by IRS and the form was for use of revenue offivers of grade nine or higher for the collection of federal taxes by the seizure of property.

An undercover IRS agent infiltrated a Salt Lake City group participating in a tax protest movement. At an April 5, 1973, meeting conducted by Goeltz, Bray said that seizure cards would be placed on automobiles, that this would cause irate citizens to call IRS; and that good publicity would result. Later Bray

told the agent that about 2,000 notices had been printed and that "we are going to do some midnight riding." At an April 19 meeting, attended by the three defendants and others, in Bray's office, Goeltz displayed the seizure notices and said that he had received them "out of the blue." The notices bore the facsimile signature of "Lloyd Fries-Revenue Officer." Goeltz told the group that the notices should be discreetly placed where IRS agents would normally place them; that if anyone was caught he should state that he was replacing what apparently had fallen off; and that a person should not have more than one notice in his possession at one time. Bray said that gloves should be worn to avoid leaving fingerprints. Goeltz added that a stack of notices would be left on the table and that each should take some as leaving the meeting. Shortly after the meeting broke up, agents arrested the three defendants, each of whom had a large number of the notices in his possession. None of the defendants were IRS officers.

Defendants say that § 701 is vague and overly broad and hence violates due process requirements. The attack is against the word "insignia" and the phrase "colorable imitation." Their clandestine activities show, and the court found, defendants knowledge of unauthorized possession and intent to violate § 701. Defendants acts were not unwitted, unintended or inadvertent. See Morissette v. United States, 342 U.S. 246, 270. They were done knowingly with intention

to harrass innocent citizens and embarrass IRS. In assessing vagueness, a statute must be considered in the light of the conduct with which a defendant is charged. See United States v. National Dairy Products Corp., 372 U.S. 29, 32-33.

The attached provisions are not indefinite, vague or uncertain. Webster's New International Dictionary, 2d ed., defines insignia as meaning "distinguishing marks of authority, office, or honor." Black's Law Dictionary defines "colorable imitation" to mean "such a close or ingenious imitation as to be calculated to deceive ordinary persons." When measured by common understanding and practice, the challenged language conveys a sufficiently definite warning as to the proscribed conduct. United States v. Petrillo, 332 U.S. 1, 8. We find no unconstitutional infirmity in § 701.

Next, defendants argue that the statute does not apply to them. Using the principle of ejusdem generis, they say that the reference to "badge, identification card, or other insignia" limits insignia to badges and identification cards. Ejusdem generis is a canon of construction and may not be used to defeat the intent of Congress. United States v. Alpers, 338 U.S. 680, 682, and Gooch v. United States, 297 U.S. 124, 128. The enactment of § 701 was intended to protect the public against the use of a recognizable assertion of authority with intent to deceive. Defendants' conduct was well within the statute's proscription.

Defendants say that their acts were for the promotion of their political and philosophical views on taxation and, hence, were within the free speech protection of the First Amendment. It is difficult to relate the defendants' possession of simulated seizure warnings to the communication of ideas. Defendants' conduct was of the dirty-trick variety and was for the purpose of enraging its victims and annoying IRS.

If this non-speech activity had any idea-communication overtones, the First Amendment is no protection. The constitutional power to lay and collect taxes is broad and sweeping. Const. Art. I, § 8, cl. 1, and Sixteenth Amendment. Collection of taxes by distraint and seizure is authorized. 26 U.S.C. § 6331. The warning which defendants simulated was a proper notice of seizure. The protection which § 701 affords constitutionally furthered an important and substantial governmental interest unrelated to the suppression of free expression. The incidental, if any, restriction on First Amendment rights "is no greater than is essential to the furtherance of" the governmental interest. United States v. O'Brien, 391 U.S. 367, 376-377. Defendant's First Amendment claim has no merit.

Defendants assert that they were unlawfully arrested because the charge was a misdemeanor not committed in the presence of the officers. One officer saw each defendant take possession of some of the simulated warnings and communicated his observations to his associates.

Consideration must be given to the collective knowledge of all the officers involved. United States v. Sheppard, 10 Cir., 455 F.2d 1081, 1083. Also the information of the officers sufficed to furnish probable cause for belief that at least three felonies, e.g. 18 U.S.C. § 506 (possession of a counterfeit seal), 26 U.S.C. §7206 (false statements) and §7212 (corrupt interference with administration of IRS laws), had been committed. The subsequent charge of a misdemeanor does not affect the legality of the arrests. The arrests, and the searches incidental thereto, were legal.

Defendants complain that they were not given a speedy trial. The arrests were on April 19, 1973; the information was filed on April 20, and the trial was on March 13, 1974. Between May 29, 1973, and March 11, 1974, defendants filed about 24 motions. At all times after April 20 defendants were released on personal recognizance.

In Barker v. Wingo, 407 U.S. 514,530, the Court said that a balancing test requires court approach to speedy trial problems on an ad hoc basis. Four factors which should be assessed are length of delay, reason for the delay, defendant's assertion of his rights, and prejudice to defendant. In the instant case the delay was about 11 months and was due in large part to defense tactics. The government never requested any delay. Defendants did not assert a right to speedy trial. The record does not show any pre-

judice to any defendant because of the delay. No Fifth or Sixth Amendment rights of any defendant were denied by the delay. See United States v. Merrick, 10 Cir., 464 F.2d 1087, 1090-1091, cert. denied 409 U.S. 1023.

The claim of insufficient evidence to sustain the convictions borders on the frivolous. The evidence, which we have outlined in part, shows that each defendant knowingly and intentionally possessed reproductions of the official IRS warning of seizure under levy bearing the IRS seal and purporting to be signed by an IRS officer.

Arraignment was on July 26, 1973. The case was later set for trial on January 9, 1974, and eventually tried on March 13. On January 24, 1974, Bray filed a motion charging Judge Ritter with bias and prejudice and asking that the trial be before another judge. Bray's appointed counsel sought to withdraw the motion but Bray would not permit him to do so. The motion falls far short of meeting the requirements of 28 U.S.C. § 144. It was untimely. It states conclusions rather than facts and shows at the most that Bray did not like Judge Ritter not that Judge Ritter was prejudiced against Bray. A decision against Bray in another case does not show prejudice. The motion was properly denied. Knoll v. Socony Mobil Oil Company, 10 Cir., 369 F.2d 425; 429-430, cert. denied 386 U.C. 977.

Defendants say that they did not have a fair trial because of the conduct of the judge. To support their claim they take numerous incidents out of context. On consideration of the entire record we are convinced that the judge exercised commendable restraint in the face of impertinent and contemptuous behavior. The trial was to the court. The judge did no more than that necessary to keep the proceedings within reasonable bounds. Cooper v. United States, 10 Cir., 403 F.2d 71, 73. A party may not taunt a judge into a reprimand and then on appeal claim the reprimand was justification for a new trial. These defendants had a fair trial and were properly convicted.

Affirmed.

APPENDIX B

UNITED STATES SENATE AND HOUSE OF REPRESENTATIVES REPORTS WHICH PASSED AS PUBLIC LAW 206, No. 14313, AND S. 1281, TO BECOME:

18 U.S.C. SEC. 701

PROVIDING AGAINST MISUSE OF OFFICIAL BADGES

May 19, 930. - Ordered to be printed

Mr. Herbert, from the Committee on the Judiciary, submitted the following

R E P O R T

(To accompany S. 1985)

The Committee on the Judiciary, having had under consideration the bill (S. 1985) providing against misuse of official badges, reports the same to the Senate and recommends that the bill do pass with the following amendment:

At the end of the bill, add the following section:

Sec. 2. Any person who offends against the provisions of this act shall, on conviction, be punished by a fine not exceeding $250 or by imprisonment for not exceeding six months, or by both such find and imprisonment.

This amendment is proposed in order to correct the inadvertent omission of the penalty clause from the bill when

introduced. Amended in this manner, the bill is identical with the measure as it passed the Senate on February 21, 1929.

The need for this legislation is indicated by the following language contained in a letter from the Department of Justice under date of December 2, 1927:

> It has come to the notice of the department that it is possible for any unauthorized person to procure from certain merchants or manufacturers badges similar to or identical with those prescribed for the use of deputy United States marshals. It may be that other prescribed badges, such as those designed for the use of special agents of the Bureau of Investigation of this department and those which it may be found desirable to prescribe for the use of penitentiary guards and probation officers, can be procured now or in the future with equal facility by unauthorized persons. It is obvious that the possession of such insignia of official status by unauthorized persons may easily result in gross imposition upon the public.

No. 2

PROHIBIT MISUSE OF OFFICIAL BADGES

April 12, 1932.-Referred to the House Calendar and ordered to be printed

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Mr. Sumners of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

(To accompany H. R. 10590)

The Committee on the Judiciary, to whom was referred the bill H. R. 10590, after consideration, report the same favorably with an amendment and recommends that the bill as amended do pass.

The committee amendment is as follows:

Page 1, line 6, after the word "officer" strike out the word "of" and insert in lieu thereof the word "or".

The purpose of this bill is to provide against misuse of official badges, identification cards, and other insignia designed for the use of public officers. The legislation is recommended by the Attorney General, who, in his letter to the chairman of the committee under date of December 7, 1931, states:

> It has come to the notice of the department that it is possible for any unauthorized person to procure from certain merchants or manufacturers badges and other insignia similar to or identical with those prescribed

for the use of officers of the United States. You can readily appreciate the prejudice to the public occasioned by the use and possession of such badges and insignia by unauthorized persons.

No. 3

PROVIDING AGAINST MISUSE OF OFFICIAL BADGES

April 29 (calendar day, May 3), 1932.-
Ordered to be printed

Mr. Waterman, from the Committee on the Judiciary, submitted the following

R E P O R T

(To accompany S. 940)

The Committee on the Judiciary, having had under consideration the bill S. 940, to provide against misuse of official badges, identification cards, and other insignia designed for the use of public officers, reports the same favorably to the Senate and recommends that the bill do pass.

The purpose and desirability of this legislation are set out in the following memorandum which was sent to the committee by the Department of Justice:

This bill is designed to prohibit the unauthorized possession and use of any badge, identification card, etc., prescribed by the head of any governmental agency for use by any officer or employee thereof, or of any colorable imitation thereof.

It has come to the notice of the department that it is possible for any unauthorized person to procure from certain merchants or manufacturers badges

similar to or identical with those prescribed for the use of deputy United States marshals; and it may be that other prescribed badges may be similarly procured. It is obvious that the possession of such insignia of official status by unauthorized persons may easily result in gross imposition upon the public.

A similar bill, but relating only to badges, passed the Senate in the Seventieth Congress (S.2213) and also in the Seventy-first Congress (s.1985), but in neither case was it finally enacted. The present bill, S. 940, is extended to cover the misuse of identification cards and other insignia as well as badges.

No.4

PROHIBITING REPRODUCTION OF OFFICIAL INSIGNIA

March 6, 1939.-Ordered to be printed

Mr. Logan, from the Committee on the Judiciary, submitted the following

R E P O R T

(To accompany S. 128)

The Committee on the Judiciary, to whom was referred the bill (S. 1281) to prohibit reproductions of official badges, identification cards, and other insignia, after consideration, report the bill favorably with the recommendation that it do pass.

Appended hereto and made a part hereof is the letter from the Attorney General recommending the enactment of the bill, and an explanation of its merits.

Department of Justice
Washington D. C.
February 7, 1939

HON. HENRY F. ASHURST,
Chairman, Committee on the Judiciary
United States Senate.

My Dear Senator: Existing law prohibits the unauthorized manufacture, sale, or possession of official badges, identifi-

cation cards, or other insignia. It does not comprehend, however, the reproduction of photographs, engravings, or other likenesses of official badges in periodicals or other similar publications. Such reproductions are highly undesirable as they at times enable unauthorized persons to counterfeit such badges, etc. I have in mind more particularly the reproduction of the badges and identification cards of the Federal Bureau of Investigation which, in the interest of the public, must be safeguarded against counterfeiting by imposters and other unauthorized individuals.

With that end in view, I recommend the enactment of the enclosed proposed bill drafted in the Department of Justice, to extend the prohibitions contained in the above-mentioned statute to photographing, printing, or otherwise reproducing the likeness of any official badge or identification card or other insignia.

With kind regards,

Frank Murphy,
Attorney General

No. 5

PROHIBITING REPRODUCTION OF OFFICIAL INSIGNIA

May 8, 1939.-Referred to the House Calendar and ordered to be printed

Mr. Walter, from the Committee on the Judiciary, submitted the following

R E P O R T

(To accompany S. 1281)

The Committee on the Judiciary, to whom was referred the bill (S. 1281) to prohibit the reproductions of official badges, identification cards, and other insignia, after consideration, report the same favorably to the House with the recommendation that the bill do pass.

Unauthorized manufacture, sale, or possession of badges, identification cards, and insignia of United States officers is prohibited by existing law. The Attorney General recommends that this prohibition be extended to unauthorized photographing, printing, or reproduction of such badges, cards, and insignia, or colorable imitations thereof.

The proposed legislation was introduced in the House as H. R. 4049 and in the Senate as S. 1281. Inasmuch as the Senate bill has passed the Senate, it is reported in lieu of the House bill.

The letter of the Attorney General to the Speaker of the House recommending the proposed legislation follows:

Department of Justice
Office of the Attorney General
Washington, D. C.
February 7, 1939.

HON. WILLIAM B. BANKHEAD,
The Speaker, House of Representatives
Washington, D. C.

My Dear Mr. Speaker: Existing law prohibits the unauthorized manufacture, sale, or possession of official badges, identification cards, or other insignia. It does not comprehend, however, the reproduction of photographs, engravings, or other likenesses of official badges in periodicals or other similar publications. Such reproductions are highly undesirable as they at times enable unauthorized persons to counterfeit such badges, etc. I have in mind more particularly the reproductions of the badges and identification cards of the Federal Bureau of Investigation, which, in the interest of the public must be safeguarded against counterfeiting by imposters and other unauthorized persons.

With that end in view, I recommend the enactment of the enclosed proposed bill drafted in the Department of Justice, to extend the prohibitions contained in the above-mentioned statute to photographing, printing, or otherwise re-

producing the likeness of any official badge or identification card or other insignia.

With kind regards,
Sincerely,

Frank Murphy, Attorney General

In compliance with clause 2a of rule XIII, existing law is printed below in roman, with new matter proposed to be inserted printed in italic. No matter is proposed to be omitted.

That hereafter the manufacture, sale or possession of any badge, identification card, or other insignia, of the design prescribed by the head of any department or independent office of the United States for use by any officer or subordinate thereof, or of any colorable imitation thereof, *or the photographing printing, or in any other manner making or executing any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or of any colorable imitation thereof,* is prohibited, except when and as authorized under such regulations as may be prescribed by the head of the department or independent office of which such insignia indicates the wearer is an officer or subordinate.

No. 6

LIBRARY OF CONGRESS' POLICY ON
COPYING OF MATERIALS BELONGING
TO GOVERNMENT

Special Notice to Readers

The following materials may not be photocopied:

a. Obligations or securities of the U. S. Government, such as paper money, Federal Reserve Notes, etc.
b. Adjusted compensation certificates for veterans of The World Wars
c. Obligations on securities of any foreign government, bank or corporation.
d. Certificates of citizenship or naturalization
e. Passports
f. Immigration Papers
g. Draft Registration cards
h. Selective Service induction papers
i. Automobile licenses, drivers licenses and similar documents
j. Badges, identification cards, passes or insignia carried by military or Navel personnel, or by members of the various Federal Departments and Bureaus, such as the F.B.I., Treasury, etc.

APPENDIX C

AFFADAVIT AND INTERNAL REVENUE

SEIZURE NOTICE

I hereby affirm that on May 1, 1975, I walked from Hastings Law School to the Federal Building in San Francisco for the purpose of obtaining an Internal Revenue Service property seizure sticker. Ms. Christine Tejada was present in the law library when I left at 10:55 a.m. and knew of my intentions.

Upon entering the Investigations Office of the I.R.S., Room 4427, I requested the sticker from a receptionist/secretary, Ms. Patti Nicolson. She obtained the document (Publication No. 34) for me along with a heavy-weight manila card of the same nature (Publication No. 180).

Then, I asked if it would be possible to use their Xerox machine to copy the documents. She willingly made the copies herself, and one is attached. I received both publications and the ten copies (approximately) at 11:10 a.m. Ms. Janice Gardner, another I.R.S. receptionist/secretary, had been at her desk within hearing distance during the entire time the exchange between Ms. Nicolson and me took place.

I arrived back at the Hastings Law School library at 11:15, showed the papers to Ms. Tejada, and related the episode to her.

Robin P. Fightmaster

Robin P. Fightmaster

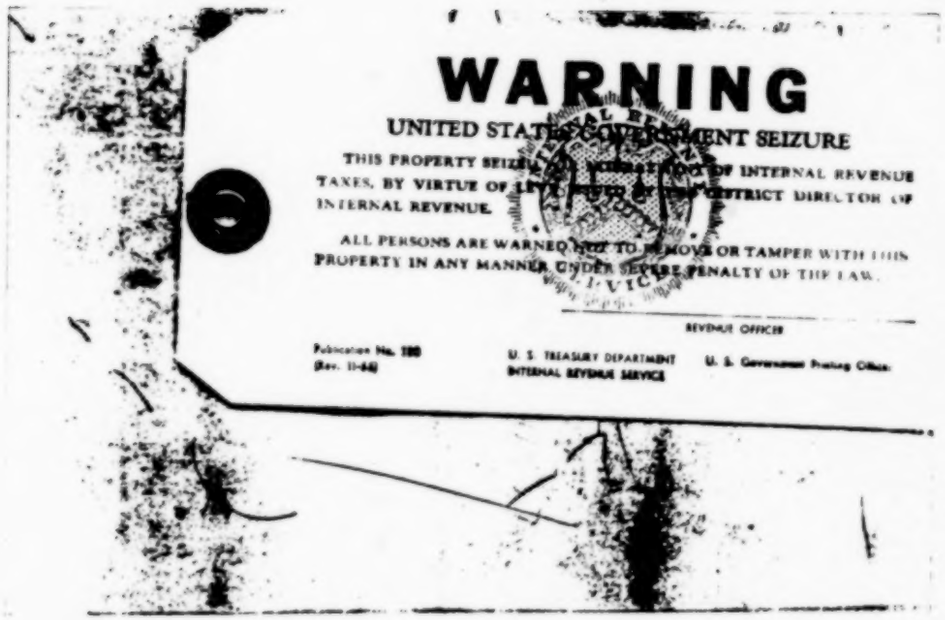
May 13, 1975

Date

State of California, County of San Francisco
On May 13, 1975, before me, Richard H. Buschman, a Notary Public, in and for said State, personally appeared ROBIN P. FIGHTMASTER, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

Richard H. Buschman

BEST COPY AVAILABLE



INTERNAL REVENUE SERVICE

WARNING

UNITED STATES GOVERNMENT SEIZURE

This property has been seized for nonpayment of internal revenue taxes, by virtue of levy issued by the District Director of Internal Revenue. All persons are warned not to remove or tamper with this property, in any manner, under severe penalty of the law.